

### **REMARKS**

Claims 1-6, 12, 16, 17 and 18 are rejected under 35 U.S.C. § 102(b) from Seiden U.S. Patent No. 5,288,512. Claim 1 has been amended to recite an appropriate lower level of the phytosterol ester component, namely 2 weight percent. It is respectfully understood that this amendment alone removes the § 102 rejection from Seiden '512. In addition, the subject matter of original claim 9 has been incorporated into claim 1. Claim 9 is not rejected from Seiden '512, and it is respectfully believed that claim 1, and all of the claims currently dependant upon claim 1 are allowable over Seiden '512 for this additional and in reason. The claims currently dependant on claim 1 are claims 2-9, 11-13, 15-18, 20-23 and 28.

In addition, claim 14, which is not rejected under Seiden '512 is re-written in independent form. Claim 19, which is not rejected from Seiden '512, also is placed into independent form. These newly in claims are respectfully believed to be likewise free of Seiden '512. None of the remaining claims are rejected from Seiden '512.

Reconsideration and withdrawal of the rejection from Seiden '512 are respectfully requested.

Claims 1-8, 12 and 16, 17 and 18 are rejected under 35 U.S.C. § 102(b) from Seiden U.S. Patent No. 3,595,673. As previously noted, claim 1 is amended to recite an approximate range of phytosterol ester component, such being greater than zero. Also, the observations made herein concerning the subject matter of original claims 9, 14, 19, and all claims dependent upon claim 1, are presented with respect to this rejection from Seiden '673.

Reconsideration and withdrawal of this rejection from Seiden '673 are

respectfully requested.

Claims 1-20 are rejected on the ground of nonstatutory obviousness-type double patenting from claims 1-25 of U.S. Patent No. 6,793,959. It is respectfully understood that the addition to claim 1 of the range of phytosterol ester component removes this rejection.

Claims 21-48 are rejected under the ground of nonstatutory obviousness-type double patenting from claims 1-38 of Nakahasi et al. U.S. Patent No. 6,793,959 in view of van Amerogen U.S. Patent No. 6,117,475 and Yang U.S. Patent No. 4,832,975. It is respectfully believed that the amendments to claim 1, 37 and 40, particularly recitation of the approximate range for the phytosterol ester component which is greater than zero, obviate this double patenting rejection.

Claims 20-25, 29-37, 40 and 43-48 are rejected under 35 U.S.C § 103 from van Amerogen and Seiden '673, further in view of Yang.

Claims 20-25 and 29-36 each are ultimately dependant upon claim 1, which includes the subject matter of original claim 28, which claim is not the subject of this § 103 rejection. It is respectfully understood that the rejection of claims 20-25 and 29-36 is thus obviated. It is accordingly understood that all of the composition claims of this application, which remain as claims 1-36, are not rendered obvious by this combination of references.

Reconsideration and withdrawal of the § 103 rejection with respect to composition claims 1-36 accordingly are respectfully requested.

Concerning independent method claim 37, the subject matter of original claim 38, not subject to this § 103 rejection, has been incorporated thereinto. It is accordingly

respectfully understood that this amended independent claim 37 is allowable over this § 103 rejection.

In method claim 40 is amended in accordance with in method claim 37. It accordingly is respectfully believed that all of the method claims remaining in this application, which are current claims 37-48, are allowable over the combination of references in the § 103 rejection.

Reconsideration and withdrawal of the § 103 rejection are respectfully requested.

Applicants have made an earnest endeavor to place all of the claims of this application into allowable form, and favorable consideration is requested.

Respectfully submitted,

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